

Representing Fathers in Child Welfare Cases

Richard Cozzola
Director-Child & Family Practice Group
LAF – Chicago IL.

With references to ABA Publication
*Advocating for Non-resident Fathers in
Child Welfare Court Cases*
(Vivek Sankaran, Andrew Cohen, Hon. Len
Edwards et al.)

Social Issues Affecting Fathers

Mark Kiselca

- Non Resident Fathers more likely poor and
 - Move more often, more children
 - More emotional, substance abuse problems
- Fear of Prosecution:Criminal, Child Support. For some meeting a lawyer = criminal.
- Traditional notions of masculinity goes against seeking help, relying on others, using child welfare professionals for help.
- Institutional biases against fathers as care givers leads to fathers being skeptical of system.

Constitutional Issues

Vivek Sankaran

- To determine level of constitutional protection, look to level of involvement: “grasping the opportunity.”
 - *Quilloin* and *Lehr*: Fathers who have not made effort to establish relationship with children, cannot use Constitution to disrupt placement.
- Importance therefore of establishing parental relationship via affidavit, registry, court
- If relationship exists entitled to due process protections.
- If no relationship, was there a meaningful opportunity or was relationship blocked by fraud/concealment.

Protections Under State Law

Vivek Sankaran

- Notice/opportunity to be heard/participate
 - Visitation/Court appointed counsel
- Presumption of parental fitness
 - But many states – non resident fathers lose presumption once finding that child was abused regardless of parent who abused child; once this happens burden shifts for father custody.
 - Or father gets physical custody but court retains legal custody – decision making
 - Some states if father willing to immediately assume care/custody, court dismisses case- granting custody to father.

Representing Non-Resident Fathers

Andrew Cohen

- 1) Protect standing: establish paternity/right to participate.
- 2) Advocating for client goals
 - a) With client: explain process, risks benefits, other outcomes such as child support.
 - b) Does he want custody or want a relative to care for child.
 - c) Tell CPS client's goal of custody.
 - d) Seek visitation.

Representing Non-Resident Fathers

Andrew Cohen

- 3) Visits: CPS must provide, client needs to attend, if possible accept every visit.
 - a) Don't be late or leave early; confirm if required.
 - b) If CPS refuses visits seek court intervention
 - c) If transportation impossible or agency refuses to schedule consistent with work schedule, seek court intervention – finding of no reasonable efforts.
 - d) If child has negative reaction to visits, work with father and worker.

Representing Non-Resident Fathers

Andrew Cohen

4) Services

- a) Get case plan
- b) Negotiate case plan services
- c) Parenting education services often helpful to fathers
- d) Services checklist includes: job training, housing assistance, parenting classes, anger management, NA/AA, referrals to other legal assistance, i.e. VA, housing, immigration
- e) Ask about father specific services

Judges

Hon. Len Edwards, Ret.

- When potential father comes to court – positive feedback/important person in child's life.
- Complete paternity testing ASAP
- Make it clear that father may be a placement possibility
- Identify father's extended family; ensure they know about legal proceedings & be considered as potential placement
- Permit extended family to participate in group decision making processes, visitation, court hearings.

Judges

Edwards, Martinez, Rubin, Schroeder, Cohen

- Encourage agency to locate father early
- Consider father as resource
- Explain that non-custodial does not mean unfit
- Court appearances & services which accommodate work schedule, transportation
- Iowa
 - Parent mentors
 - Handbooks
 - Zero to Three Project with focus on fathers.

Male Help Seeking and Engaging Dads

- Men and women learn and seek help differently
- These differences should not cloud objective assessments of the father's interest, capacity or ultimately what is in the child's best interest.
 - Father doesn't want to do the assigned parenting class. You find out that the class is mostly women and the focus is on emotional disclosures. Will this service truly benefit this dad?
 - Identify services that are informational and provide concrete practical guidance.
 - Discussions should be action oriented and focus on planning for the future and resolving problems.

Learn the Law – One Example

Reasonable Efforts: Legal/Policy Background

Adoption Assistance Act – More focus on reunification;
AFSA on the overall permanency goal.

Fostering Connections – Emphasis on relatives though
may be difficult to find an enforcement key (check state
law for more specific requirements).

Understand *Artist M.* and how it does not impact
individual decisions.

Know the Law on Reasonable Efforts

A no reasonable efforts finding is not the end of all funding for
your state child welfare agency despite what some claim.

REASONABLE EFFORTS:

45 CFR 1356.21-REMOVAL

(1) Judicial determination of reasonable efforts to prevent a child's removal from the home.

- (i) When a child removed from home, judicial determination as to whether reasonable efforts were made, or not required to prevent the removal . . . must be made no later than 60 days from removal date . . .
- (ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

REASONABLE EFFORTS: 45 CFR 1356.21(b)(2)

Judicial determination-reasonable efforts to finalize permanency plan.

(i) State agency must obtain judicial determination it has made reasonable efforts to finalize the permanency plan (reunification, adoption, legal guardianship, placement with fit/willing relative, placement in another planned permanent living arrangement) within 12 months of date child entered foster care & at least once every 12 months thereafter . . .

(ii) If judicial determination regarding reasonable efforts to finalize a permanency plan not made in accordance with the schedule prescribed in (b)(2)(i), child becomes ineligible under IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

Significance at Removal Hearing

Feds get importance of TC.

No Reasonable Efforts at TC can be a big deal, but agency has 60 days from removal to correct.

Implications for what parent's attorney – and others court people do at TC.

A no reasonable efforts finding could light a fire to get services going

Could tell the client something about his/her attorney and the rest of the system

Reasonable Efforts Later in case

AT 12 Month Intervals:

If No Reas Efforts granted - Only shorts the funding for a month – unless it does not get fixed in that time.

Implications of deferring ruling with specific instructions to the agency

Implications for holding everyone accountable

Utilize the Law in Your Work

Reasonable Efforts

- Out of court -Inquire about the father/paternal relatives early...and often
- In Court - All Attorneys/GALs/CASA ensure that the agency makes reasonable efforts:
 - Remind agency to continue efforts to find the father & paternal relatives
 - In court inquire about father's whereabouts (all attys)
 - status of paternal relatives.
 - Look- for paternal relatives yourself/through client.
 - Asking the child (if age appropriate); Asking the mother and other known relatives about the father.
- Using the Reasonable Efforts Language in Court

Inquire about the father and paternal relatives early...and often

- If you don't...
 - It prevents the child from maintaining or establishing an important connection with a parent.
 - It may prevent the child from maintaining or establishing connections with paternal relatives.
 - It deprives the child, court and parties of important information about the father's and his relative's capacity to parent or be involved in the child's life.
 - It may delay permanency for the child if adoption is the goal.

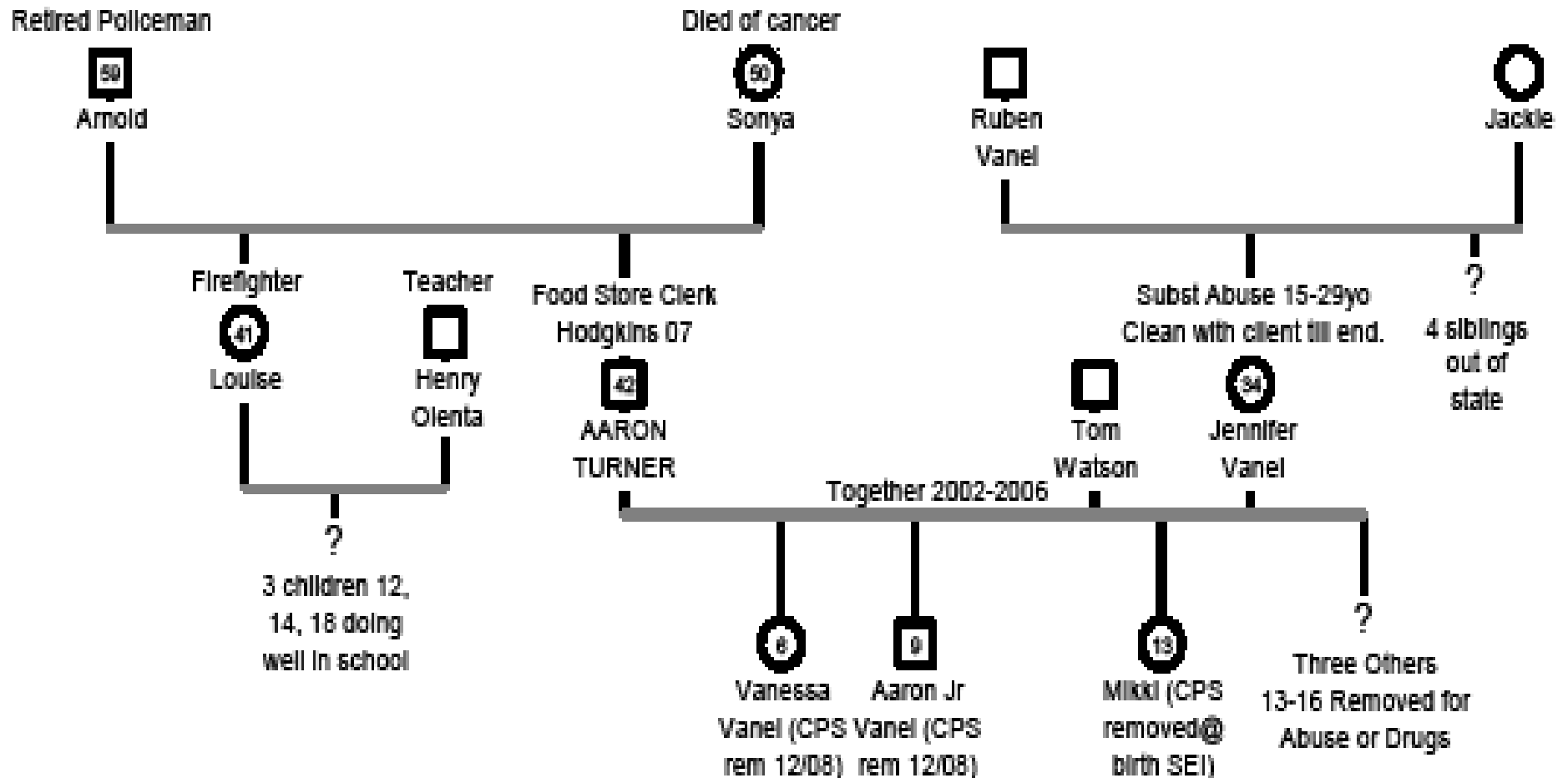
Specific Issues in Representing Fathers

- Interview
- Understand Family
- Understand Placement Options
- Establish Goals/Revise Goals
- Disspell Myths
- Explain the Control in the Uncontrollable

Aaron-Interview & Overall Goals

- Interview information
 - Genogram
 - Job
 - Goals clarification
 - Story of relationship
 - His view of mom
 - His view of dad
 - His view of self
 - View/wishes for children.
 - AA
- Group Decision Making
 - Listening
 - Rules-Kinship
 - Clarifying
- Positive steps each court date
 - Job
 - AA
 - Family-Kinship Rules
 - Communicate positive view of children

Aaron



Interview and Post

- Bringing the family issues to the attention of the court.
- Getting agreement before court and commitment from worker in court on record to explore family.
- Call the agency post court and track the issue and move on it early.
- Asking court to defer reasonable efforts (or court deciding to defer reasonable efforts TC finding on its own motion).

Life of Case

- Reasonable Services
- Reasonable Visitation
- Realism with Client
- Giving control to client: you role – his role.
- Advocacy outside of court
 - With worker, providers & at meetings/staffings.
- Advocacy in Court
 - Something positive each court date
 - Motions to match the out of court work client does.